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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1997/2010

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Fatima Rizvanović and Ruvejda Rizvanović (represented by counsel, Track Impunity Always (TRIAL))
Alleged victims:	The authors and their missing relative, Mensud Rizvanović
State party:	Bosnia and Herzegovina
Date of communication:	15 September 2010 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 18 November 2009, 24 November 2009, 29 December 2009 and 1 June 2010 (not issued in document form)
Date of adoption of Views:	21 March 2014
Subject matter:	Enforced disappearance and effective remedy
Substantive issues:	Right to life, prohibition of torture and other ill-treatment, liberty and security of person, right to be treated with humanity and dignity, recognition of legal personality, right to an effective remedy
Procedural issues:	Insufficient substantiation
Articles of the Covenant:	6, 9, 10 and 16, read in conjunction with art. 2, para. 3; 7, read alone and in conjunction with art. 2, para. 3; 26 and 2, para. 1
Articles of the Optional Protocol:	-

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (110th session)

concerning

Communications Nos. 1997/2010*

Submitted by:	Fatima Rizvanović[1] and Ruvejda Rizvanović (represented by counsel, Track Impunity Always (TRIAL))
Alleged victims:	The authors and their missing relative, Mensud Rizvanović
State party:	Bosnia and Herzegovina
Date of communication:	15 September 2010 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 March 2014,

Having concluded its consideration of communication No. 1997/2010, submitted to the Human Rights Committee by Fatima Rizvanović and Ruvejda Rizvanović under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the authors of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The authors of the communication are Fatima Rizvanović, a Bosnian national born 28 August 1929, and Ruvejda Rizvanović, a Bosnian national born 18 August 1952. They submit the communication on their own behalf and on behalf of Mensud Rizvanović (son of Fatima Rizvanović, and husband of Ruvejda Rizvanović), who is the victim of enforced

* The following Committee members participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.
An individual opinion by Committee member Gerald L. Neuman, joined by Committee member Anja Seibert-Fohr (concurring) is appended to the present views.

[1] On 20 August 2013, the Committee was informed that Fatima Rizvanović had passed away on 19 May 2013, and that Ruvejda Rizvanović remains the sole author of the communication filed on 15 September 2010.

disappearance that took place in July 1992, and whose fate and whereabouts remain unknown. At the time of the events that led to his enforced disappearance, Mensud Rizvanović resided and worked as a postman in Rizvanovići. He is the father of two children. The authors claim a violation of articles 6, 7, 9, 10 and 16, in conjunction with article 2, paragraph 3 of the International Covenant on Civil and Political Rights in respect to Mensud Rizvanović. They further allege that they are themselves victims of a violation by Bosnia and Herzegovina[2] (hereinafter BiH) of article 7, read alone and in conjunction with article 2, paragraph 3, and of articles 2, paragraph 1, and 26 of the Covenant. The authors are represented by the organization TRIAL (Track Impunity Always).

The facts as submitted by the authors

2.1 After its declaration of independence in March 1992, an armed conflict broke out in Bosnia and Herzegovina. The key local parties to the conflict were *Armija Republike Bosne i Hercegovine* (ARBiH), mostly made up of Bosniacs[3] and loyal to the central authorities, *Vojska Republike Srpske* (VRS) and *Hrvatsko vijeće obrane*, mostly made up of Croats.[4]

2.2 On 20 July 1992, members of the VRS forces and paramilitary groups surrounded the village of Rizvanovići and apprehended many civilians, including Mensud Rizvanović who was in his house with his wife and children. This event took place in the general context of the "ethnic cleansing operations" that were perpetrated in the area. According to eyewitnesses, Mensud Rizvanović was taken to the school in Rizvanovići, together with other men. From there, they were taken to the Keraterm concentration camp. Reportedly, Mensud Rizvanović and the other men were living in inhumane conditions at the Keraterm camp, and were frequently beaten and ill-treated. Mensud Rizvanović was last seen alive, by eyewitnesses, in life-threatening circumstances in the hands of the guards of the facility, who were allegedly taking him and other men to an unknown location to perform forced labour.[5] The fate and whereabouts of Mensud Rizvanović remain unknown.

2.3 The armed conflict came to an end in December 1995 when the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter "the Dayton Agreement") entered into force.[6]

2.4 More than 18 years after the disappearance of Mensud Rizvanović, no *ex officio*, prompt, impartial, thorough, independent and effective investigation has been carried out

[2] Bosnia and Herzegovina (BiH) is a party to the International Covenant on Civil and Political Rights (on 1 September 1993, BiH succeeded the former Yugoslavia, which had ratified the treaty on 2 June 1971), as well as to the First Optional Protocol to the Covenant, which entered into force for BiH on 1 June 1995.

[3] Bosniacs were known as Muslims until the 1992–1995 war. The term "Bosniacs" (*Bošnjaci*) should not be confused with the term "Bosnians" (*Bosanci*), which is commonly used to denote citizens of Bosnia and Herzegovina irrespective of their ethnic origin.

[4] After the 1992–1995 war, ARBiH,VRS and *Hrvatsko vijeće obrane* gradually merged into the Armed Forces of Bosnia and Herzegovina.

[5] The eyewitness to those events was Midhad Duratović, who was taken to Keraterm camp together with Mensud Rizvanović, and with whom he shared a room in the detention facility. The information was confirmed in 2000 by Ibrahim Alagić, Mensud Rizvanović's nephew, who had been apprehended together with him.

[6] In accordance with the Dayton Agreement, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The Dayton Agreement failed to resolve the Inter-Entity Boundary Line in the Brčko area, but the parties agreed to a binding arbitration in this regard under the rules of the United Nations Commission on International Trade Law (UNCITRAL). The Brčko District, under the exclusive sovereignty of the State and international supervision, was formally inaugurated on 8 March 2000.

by the BiH authorities. Notwithstanding the existence of evidence that those responsible for the apprehension and the enforced disappearance of Mensud Rizvanović were members of the VRS army, no one has been summoned, indicted or convicted for these crimes, thus fostering an ongoing climate of impunity.

2.5 Four days after the apprehension of her husband, Ruvejda Rizvanović and her children were taken by VRS soldiers to the concentration camp in Trnopolje, and then to Travnik, where they remained for two weeks. From there, they reached Posusje. On 25 August 1992, the brother-in-law of Ruvejda Rizvanović took her and her children to Sierning, Austria. Throughout this period, Ruvejda Rizvanović had no information as to what had happened to Fatima Rizvanović. They finally met again in Sierning.[7]

2.6 Together, Fatima and Ruvejda Rizvanović initiated proceedings to look for Mensud Rizvanović. They reported his enforced disappearance to the municipality of Sierning;[8] they visited the Sierning office of the Red Cross monthly; sent letters and tracing requests through the Austrian Red Cross and the Office for Banned Persons and Refugees in Zagreb; sent information to the International Committee of the Red Cross (ICRC) headquarters and to a Bosnian magazine that is diffused among the Bosnian diaspora.[9] Upon their return to Rizvanovići,[10] the authors reported the enforced disappearance of Mensud Rizvanović to international organizations present in BiH (namely, the International Commission on Missing People and the ICRC) and to entities dealing with missing persons (such as the Australian Red Cross, the Federation Commission on Missing People, the Missing People Institute, the Republika Sprska Operative Team for Tracing Missing Persons). Fatima and Mensud Rizvanović's children also gave DNA samples to the ICRC to facilitate potential identification of remains. Mensud Rizvanović is still registered as "person unaccounted for" in the ICRC database.

2.7 On 26 November 2003, Ruvejda Rizvanović obtained a decision from the Municipal Court in Prijedor declaring Mensud Rizvanović dead as of 22 November 1996, the "first day after the passing of one year since the end of the hostilities". The authors state that they were extremely reluctant to avail themselves of the decision without knowing with certainty the fate and whereabouts of Mensud Rizvanović; but it was necessary for them to have access to a monthly pension, and the Municipal Courts awarded a social allowance to relatives of missing persons only on the presentation of a death certificate. The authors consider that that painful procedure amounts to treating "enforced disappearance" as a "direct death", while there is no certainty as to the fate and whereabouts of the disappeared person. In February 2009, the Administrative Service, Department for Veterans and Protection of the Disabled in Prijedor issued a decision granting both authors the right to obtain a monthly pension[11] as of 1 October 2007. That pension is a form of social assistance and cannot be considered as an adequate measure of reparation for the violations suffered.

2.8 In May 2006, Fatima Rizvanović submitted an application to the Human Rights Commission of the BiH Constitutional Court. The Court joined it to the applications of other members of the Izvor Association of Relatives of Missing People. On 16 July 2007, the Constitutional Court adopted a decision, concluding that the applicants of that collective

[7] No information is provided as to exactly when Ruvejda Rizvanović and Fatima Rizvanović were able to meet again in Sierning.

[8] Fatima Rizvanović did not obtain written evidence of her report.

[9] *The Golden Lily* had a section on missing persons. Following that publication, Ruvejda Rizvanović received a letter from the International Islamic Institute alleging that her husband had been slaughtered by the Ustasha. There is no information enabling confirmation of this allegation.

[10] No information is provided as to the date of their return to BiH.

[11] Fatima Rizvanovic was granted a monthly pension of 70 KM (approximately 35 EUR) per month.

action were relieved of the requirement of exhausting domestic remedies before ordinary courts, as "no specialized institution on enforced disappearance in BiH seems to be operating effectively".[12] The Court further found a violation of articles 3 and 8 of the European Convention on Human Rights, due to lack of information on the fate of the disappeared relatives of the applicants, including Mensud Rizvanović. The Court ordered the BiH authorities concerned to provide "all accessible and available information on members of the applicants' families who went missing during the war, [...] urgently and without further delay and no later than 30 days from the date of the receipt of the decision". The Constitutional Court did not adopt any decision on the issue of compensation, considering that it was covered by the provisions in the Law on Missing Persons concerning financial support and by the establishment of the Fund for Support to the Families of Missing Persons. The authors argue, however, that the said provisions on financial support have not been implemented and that the Fund has still not been established.

2.9 In March 2008, Fatima Rizvanović received a letter dated 27 December 2007 from the Republika Sprska Government Office for Tracing Detained and Missing Persons, informing her that Mensud Rizvanović had been registered as a missing person with the ICRC and the Federation Commission for Missing Persons, and that the Republika Srpska Government Office for Tracing Detained and Missing Persons was committed to resolving the issue of missing persons as soon as possible. That was the last letter that Fatima Rizvanović received from the "concerned authorities" in the context of the implementation of the Constitutional Court decision. The time limit set by the Constitutional Court decision of 16 July 2007 expired and no relevant information on the fate and whereabouts of Mensud Rizvanović was provided to the Court or to the authors.

2.10 On 13 May 2009, Fatima Rizvanović filed a request for compensation under the Law on the Right to Compensation for Pecuniary and non-Pecuniary Damage, caused by War Activities during the Period from 20 May 1992 to 19 June 1996. On 23 September 2010, the State Attorney's Office of the Republika Srpska[13] rejected her request, arguing that it did not have the competence to decide on her claim, which did not refer to damage suffered in connection with the conduct of military service and military defence activities. On 28 September 2010, Fatima Rizvanović appealed that decision before the Ministry of

[12] Principle on admissibility stated in Constitutional Court of BiH, *M.H. and others*, case No. AP-129/04, judgement of 27 May 2005, paras. 37–40, referred to in the judgement for the case of Mensud Rizvanović: *Jele Stjepanović and others*, case No. AP 36/06, judgement of 16 July 2007.

[13] On 21 September 2010, TRIAL requested clarification on the functioning of the procedure established by the Law on the Right to a Compensation for Pecuniary and non-Pecuniary Damage, caused by the War Activities in the Period from 20 May 1992 to 19 June 1996. On 27 September 2010, the State Attorney's Office of the Republika Srpska sent an official answer, stating that the amended provisions extending the deadline for submitting applications are "connected to articles 15 and 16 (war disabled persons and families of killed and disappeared soldiers) of the basic law and thus they do not encompass civilian victims of war who can realize their right entirely through judicial institutions under the condition that they have filed requests to regular courts." Since, from the reading of the Law on the Right to Compensation for Pecuniary and non-Pecuniary Damages and its subsequent amendments, it does not result that civilians are excluded from the right to receive compensation nor that they have to follow a procedure different from that applied to veterans, TRIAL again contacted the State Attorney's Office of the Republika Srpska. On that occasion, the representative of the State Attorney's Office admitted that civilians were not expressly excluded from the enjoyment of compensation by the text of the law, but that according to their interpretation of the law, only members of the VRS were entitled to compensation. The author submits that the interpretation of the law is clearly discriminatory and not grounded in any legal provision.

Justice of the Republika Srpska. No decision had been adopted at the time of submission of the present complaint.

2.11 On 19 July 2010, Fatima Rizvanović sent another letter to the Republika Srpska Operative Team for Missing Persons, seeking additional information about the measures undertaken to implement the Constitutional Court's decision of 16 July 2007. On 23 July 2010, she received a reply stating that it was the responsibility of the Missing Persons Institute to provide information. On 13 April 2011, she contacted the BiH Constitutional Court and pointing out the failure to implement the decision of 16 July 2007 and requesting the Court to adopt a ruling under article 74.6 of its Rules of Procedure.[14] At the time of submission of the communication to the Committee, the Court had not replied.

2.12 On 16 September 2010, Fatima Rizvanović received a letter from the Missing Persons Institute, informing her that, so far, it had been impossible to establish the fate of Mensud Rizvanović, that a request for the exhumation of a number of mass graves on the territory of Prijedor municipality had been processed by the Prosecutor's Office of BiH and that a court order was expected. The Institute finally indicated that, upon receipt of a DNA analysis corresponding to the preliminary identity of her son, they would inform her about the process of final identification and deliver the mortal remains of Mensud Rizvanović for burial.

2.13 The authors refer to the findings of the Constitutional Court, according to which, currently, "referral to ordinary courts of BiH would yield no result" and that no specialized institution on missing persons in BiH operates effectively. Accordingly, the Constitutional Court considered that Fatima Rizvanović and the other applicants "did not have at their disposal an effective and adequate remedy to protect their rights". In compliance with article VI (4) of the BiH Constitution, the ruling of 16 July 2007 must be considered final and binding, and the authors do not have any other effective remedy to exhaust. As to the competence *ratione temporis* of the Committee, the authors refer to the jurisprudence of national and international jurisdictions and human rights mechanisms, as well as to the provisions of international treaties stating the continuous or permanent nature of enforced disappearances.[15] In the present case, Mensud Rizvanović was arbitrarily deprived of his liberty on 20 July 1992 and, since then, the violations of his rights and of the rights of the authors continue.

[14] Article 74.6 of the Constitutional Court Rules of Procedure states: "in the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced and it may determine the manner of enforcement of the decision. This ruling shall be transmitted to the competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court to adopt the mentioned ruling on the lack of enforcement of previous decisions".

[15] See, inter alia, European Court of Human Rights (ECHR), *Varnava and others* v. *Turkey*, Grand Chamber judgement of 18 September 2009, paras. 136–148; Inter-American Court of Human Rights (IACHR), *Goiburú and others* v. *Paraguay*, judgement of 22 September 2006, Series C No. 153; IACHR, *Radilla Pacheco* v. *México*, judgement of 23 November 2009, Series C No. 209, para. 23–24; WGEID, general comment No. 9 (2010) on enforced disappearance as a continuous crime, available from http://www2.ohchr.org/english/issues/disappear/docs/GC-EDCC.pdf; International Convention for the Protection of all Persons against Enforced Disappearance, art. 8, para. 1; communication No. 400/1990, *Mónaco de Gallicchio* v. *Argentina*, Views adopted 3 April 1995, para. 10.4.

The complaint

3.1 On the admissibility of the communication *ratione temporis*, the authors submit that, even though the events took place before the entry into force of the Optional Protocol for the State party, enforced disappearances of persons is *per se* a continuing violation of several human rights. In the authors' case, the lack of information about the causes and circumstances of the disappearance of Mensud Rizvanović, as well as about the progress and results of the investigations carried out by BiH authorities continue after the Protocol's entry into force. In that regard, the authors submit that the ongoing failure by BiH authorities to carry out an *ex oficio*, prompt, impartial, thorough and independent investigation, and to prosecute and punish those responsible for the arbitrary deprivation of liberty, ill-treatment and enforced disappearance of Mensud Rizvanović, as well as the State party's failure to implement the July 2007 decision of the Constitutional Court, amounts to a violation of articles 6, 7, 9, 10 and 16 in conjunction with article 2, paragraph 3 of the Covenant in respect of Mensud Rizvanović.

3.2 The authors consider that the responsibility for shedding light on the fate of Mensud Rizvanović lies with the State party. They refer to a report of the Working Group on Enforced or Involuntary Disappearances (WGEID) which states that the primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls.[16] The authors further argue that the State party has an obligation to conduct a prompt, impartial, thorough and independent investigation of gross human rights violations, such as enforced disappearances, torture or arbitrary killings. The obligation to conduct an investigation also applies in cases of killings or other acts affecting the enjoyment of human rights that are not imputable to the State. In these cases, the obligation to investigate arises from the duty of the State to protect all individuals under its jurisdiction from acts committed by private persons or groups of persons which may impede the enjoyment of their human rights.[17]

3.3 With regard to article 6, the authors refer to the Committee's jurisprudence according to which a State party has a primary duty to take appropriate measures to protect the life of a person.[18] In cases of enforced disappearances, the State party has an obligation to investigate and bring perpetrators to justice. The authors consider that the State party's failure to do so in the present case amounts to a violation of Mensud Rizvanović's right to life, in breach of article 6, read in conjunction with article 2, paragraph 3, of the Covenant. Mensud Rizvanović was illegally detained and has remained unaccounted for since 20 July 1992. Despite numerous efforts by the authors, no *ex officio*, prompt, impartial, thorough and independent investigation has been carried out and the victim's fate and whereabouts remain unknown.

3.4 The authors further submit that Mensud Rizvanović was illegally detained without charge by VRS soldiers and that he was held indefinitely, without communication with the

[16] See the report by Manfred Nowak, expert member of WGEID responsible for the special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1996/36), para. 78.

[17] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8 *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III; as well as IACHR, *Chitay Nech and others* v. *Guatemala*, judgement of 25 May 2010, Series C No. 212, para. 89; IACHR, *Velasquez Rodriguez* v. *Honduras*, judgement of 29 July 1988, Series C No. 4, para. 172; ECHR, *Demiray* v. *Turkey*, Application No. 27308/95, judgement of 21 November 2000, para. 50; ECHR, *Tanrikulu* v. *Turkey*, Application No. 23763/94, judgement of 8 July 1999, para. 103; and ECHR, *Ergi* v. *Turkey*, Application no. 23818/94, judgement of 28 July 1998, para. 82.

[18] Communication No. 84/1981, *Dermit Barbato* v. *Uruguay*, Views adopted on 21 October 1982, para. 10.

outside world, while repeatedly ill-treated and subjected to forced labour. In that regard, the authors consider that the mere fact that Mensud Rizvanović was last seen in the Keraterm camp in the hands of agents known to have committed several other acts of torture and arbitrary killings concretely exposed him to a grave risk of suffering violations of his rights under article 7 of the Covenant. The authors further refer to the jurisprudence of the Committee, according to which enforced disappearance constitutes, in itself, a form of torture,[19] on which no investigation has yet been carried out by the State party in order to identify, prosecute, judge and sanction those responsible in the case under review. The authors consider that this amounts to a violation of article 7, read in conjunction with article 2, paragraph 3, of the Covenant in respect of Mensud Rizvanović.

3.5 The authors further argue that the State party has not provided any explanation as to the arrest of Mensud Rizvanović without a warrant, and his transfer to the Keraterm camp by members of the VRS army. The authors also point out that the detention of Mensud Rizvanović was not recorded in any official register or proceedings brought before a court to challenge its lawfulness. As no explanation has been given by the State party and no efforts have been made to clarify the fate of Mensud Rizvanović, the authors consider that the State party has violated article 9, read in conjunction with article 2, paragraph 3, of the Covenant.

3.6 Mensud Rizvanović was held in Keraterm camp and did not have the possibility of communicating with the outside world. The authors refer to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY), in which the conditions endured in Keraterm were qualified as inhumane and degrading.[20] They further recall that eyewitnesses had seen Mensud Rizvanović being ill-treated.[21] The authors recall the Committee's jurisprudence according to which enforced disappearance itself constitutes a violation of article 10 of the Covenant.[22] They consider that the failure by the State party to investigate the torture and inhuman and degrading treatment the victim suffered in detention amounts to a violation of article 10, read in conjunction with article 2, paragraph 3, of the Covenant in respect of Mensud Rizvanović.

3.7 The authors refer to the jurisprudence of the Committee, according to which enforced disappearance may constitute a refusal to recognize the victim before the law if that person was in the hands of the authorities of the State party when last seen, and if the efforts of their relatives to obtain access to effective remedies have been systematically denied.[23] The ceaseless efforts undertaken by the authors to shed light on the fate of Mensud Rizvanović and to access potentially effective remedies have been impeded since his disappearance. The authors therefore consider that the State party is responsible for an ongoing violation of article 16, read in conjunction with article 2, paragraph 3, of the Covenant in respect of Mensud Rizvanović.

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[19] Communications No. 449/1991, *Mojica* v. *Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; No. 1327/2004, *Grioua* v. *Algeria*, Views adopted on 16 August 2007, para. 7.6; No. 1495/2006, *Zohra Madoui* v. *Algeria*, Views adopted on 1 December 2008, para. 7.4.

[20] See, inter alia, ICTY, *The Prosecutor* v. *Dusco Sikirica, Damir Dosen and Dragan Kolundzija*, Case No. IT-95-8-S, Sentencing judgement of 13 November 2001, paras. 52-100; ICTY, *The Prosecutor* v. *Miroslav Kovcka et al.*, Case No. IT-98-30/1-T, Trial judgement of 2 November 2001, paras. 112-114.

[21] See footnote 6 above.

[22] Communication No. 1469/2006, *Yasoda Sharma* v. *Nepal*, Views adopted on 28 October 2008, para. 7.7.

[23] Communications No. 1495/2006, *Zohra Madoui* v. *Algeria*, Views adopted on 1 December 2008, para. 7.7; No. 1327/2004, *Grioua* v. *Algeria*, Views adopted on 16 August 2007, para. 7.9.

3.8 The authors further allege that they are themselves victims of a violation by BiH of article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant because of the severe mental distress and anguish caused by: (a) the disappearance of Mensud Rizvanović; (b) the *de facto* requirement to declare him dead in order to access a pension; (c) the continued uncertainty about his fate and whereabouts; (d) the failure to investigate and ensure an effective remedy; (e) the lack of attention to their case as reflected, for example, in the use of template letters to reply to their reiterated requests for information, which still remain without answers; (f) the non-implementation of various provisions of the Law on Missing Persons, including those concerning the establishment of the Fund for Support to the Families of Missing Persons; (g) the failure by the State party to implement the judgement of the BiH Constitutional Court.[24] The authors therefore consider that they have been victims of a separate violation of article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant.

3.9 The authors also consider that the application of specific procedural burdens to civilian victims of war in order for them to access non-pecuniary damages, as opposed to veterans of the VRS, amounts to discrimination in violation of articles 2, paragraph 1, and 26 of the Covenant. In line with this statement, the authors maintain that the rejection of their claim for non-pecuniary damage under the Law on the Right to Compensation for Pecuniary and non-Pecuniary Damage caused by the War Activities in the Period from 20 May 1992 to 19 June 1996, on the ground that Mensud Rizvanović was a civilian victim of war, does not result from the provisions of the relevant legislation, but from the interpretation of the provisions by the Republika Srpska Attorney General's Office. They consider that that interpretation amounts to discrimination in violation of their right to an effective remedy and to fair and adequate compensation and reparation for harm suffered.

The State party's observations

4.1 The State party submitted observations in April 2011. As regards the general framework, the State party submits that in the post-war period, since 1996, a large number of requests for compensation for non-pecuniary damage have been submitted by citizens to courts in the Republika Srpska, which have issued a large number of final judgements ordering the payment of damages in a short period and without discrimination. To avoid undermining the fulfilment of budgetary commitments of the Republika Srpska and its functioning, the Law on Determination and Manner of Settling the Internal Debt of the Republika Srpska was passed on 15 July 2004, providing for pecuniary and non-pecuniary damages caused during the war to be settled by the issue of bonds of the Republika Srpska "with maturity of 14 years". The payment is to be made in 10 instalments within the period of 9 to 14 years after the decision. The State party further states that in order to deal efficiently with those damages, the Republika Srpska passed a special Law on Compensation for Pecuniary and non-Pecuniary Damages, in an attempt to relieve the courts in the Republika Srpska from the caseload involving war damage compensation, trying to enter into extra-judicial settlement upon agreement of the injured party.

4.2 As regards the authors' situation, the State party submits that Fatima Rizvanović filed a request for compensation to the Srpska Attorney General's Office on 13 May 2009. The State party further indicates that article 8, paragraph 2, of the Law on Compensation for Pecuniary and non-Pecuniary Damage, caused by the War Activities in the Period from 20 May 1992 to 19 June 1996 provides for the right to reach extrajudicial settlement for pecuniary and non-pecuniary damage caused during the war to those persons whose

[24] ECHR, *Suljagic* v. *Bosnia and Herzegovina*, Application no. 27912/0210, judgement of 3 November 2009, para. 21.

requests were received after 19 June 2001, and whose damage was caused "in the military line of duty and duties to defend the country". The State party considers that, as Mensud Rizvanović disappeared as a civilian victim of war and not as military personnel, the Srpska Attorney General's Office did not have jurisdiction to reach an extrajudicial settlement in order to compensate Fatima Rizvanović, and that she had been informed of this situation in writing. The State party considers that Fatima Rizvanović should seek compensation through a civil action before a competent court.

Authors' comments on the State party's observations

5.1 The authors submitted their comments on 12 May 2011 and refer to the Working Group on Enforced or Involuntary Disappearances (WGEID) general comment No. 9 (2010) on enforced disappearance as a continuous crime.[25] They consider that the State party's observations corroborate the fact that Mensud Rizvanović remains registered as a missing person "unaccounted for" and inform the Committee that no match has been found through the online inquiry tool set up by the International Commission on Missing Persons (ICMP). The tracing process is therefore still open under the responsibility of the BiH authorities.

5.2 The authors consider that the observations of the State party do not raise any challenge to the claims they have submitted, nor do they refer to any ongoing investigation to determine those responsible or to measures undertaken to establish the fate and whereabouts of Mensud Rizvanović. The authors refer to the jurisprudence of the Committee, according to which, in such circumstances, due weight must be given to the authors' allegations.[26] They consider that the State party's silence only corroborates that the BiH authorities are not fulfilling their obligation to investigate, bring to trial and punish those responsible for the enforced disappearances. The authors further point out that they had not been contacted by the Missing Persons Institute and consider that silence as another demonstration of the lack of communication between the authorities of the State party and relatives of missing persons.

5.3 The authors reiterate their claim to know the identity of the perpetrators, the fate and whereabouts of Mensud Rizvanović, as well as the progress and results of the search. They also request to be closely associated with all the steps of the proceedings initiated by the competent authorities of the State party. In that regard, the authors refer to the Working Group on Enforced and Involuntary Disappearances (WGEID) general comment No. 10 (2010) on the right to the truth in relation to enforced disappearance which identifies the participation of the relatives of the victim as part of their right to the truth (para. 3).[27]

5.4 The authors submit that their case must be read in the overall situation of impunity of war crimes. Many obstacles are practical in nature, such as limited prosecutorial resources, lack of necessary expertise and lack of witness protection. The authors also consider that this situation results from a lack of willingness on the part of the police to investigate, and from the failure of prosecutors to make use of available evidentiary sources.[28]

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[25] See A/HRC/16/48, para. 39, available from http://www.ohchr.org/EN/ISSUES/DISAPPEARANCES/Pages/DisappearancesIndex.aspx.

[26] See, inter alia, communication No. 886/1999, *Bandarenko* v. *Belarus*, Views adopted on 28 April 2003, para. 10.2.

[27] See A/HRC/16/48, para. 39, available from http://www.ohchr.org/EN/ISSUES/DISAPPEARANCES/Pages/DisappearancesIndex.aspx.

[28] See Report of the Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27 – 30 November 2010 (CommDH(2011)11, paras. 132 and 133.

5.5 The authors further argue that the State party's observations only refer to the issue of the claim for non-pecuniary compensation that was submitted by Fatima Rizvanović on 19 May 2009. They indicate that the appeal she presented on 28 September 2010 against the decision of the Republika Srpska Attorney General Office was still pending at the time of their submission of the present communication.

5.6 The authors consider that the letter of the Republika Srpska Attorney General Office confirms the existence of discrimination in the enjoyment of the right to an effective remedy to the detriment of civilian victims of war. In its submission, the State party does not challenge the existence of such discrimination nor does it submit any comment as to the fact that the authors have not received redress and reparation. The authors consider that that silence corroborates their arguments on this issue.

5.7 The authors inform the Committee that, on 22 March 2011, the Constitutional Court replied to Fatima Rizvanović's request for the adoption of a ruling of non-implementation of the Court's decision of 16 July 2007. In that letter, the Court stated that on 27 March 2009, it had adopted an Information on the Enforcement of Constitutional Court Decisions in the period from 1 January until 31 December 2008, and that the Court's decision of 16 July 2007 was therefore considered enforced. The authors argue that they had to wait two years to receive information concerning the decision, the adoption of which does not reflect the reality, as the Fund has still not been established and no information has been provided as to the fate and whereabouts of Mensud Rizvanović. The authors consider that the decision reflects the systemic problem of non-implementation of the Constitutional Court's decisions and is a further sign of indifference on the part of the BiH authorities.

Further submissions from the State party

6.1 On 4 and 17 August 2011, the State party provided further information in response to the authors' comments. The Republika Srpska Attorney General's Office considers that it is not competent to address the authors' request for compensation because it is only in charge of the representation and protection of property interests of Republika Srpska for civil matters. It is the Prosecutor's Office that has jurisdiction over criminal matters. It therefore argues that the decision dismissing the authors' claim was adopted for lack of jurisdiction. In addition, taking into account that the Law on Compensation for Pecuniary and non-Pecuniary Damages, caused during the war is not the only relevant legislation, and that other procedures exist for the authors to exercise their right to compensation, the State party considers that the authors have not sufficiently substantiated their claim as to the discriminatory character of the decision in question.

6.2 The State party argues that significant efforts have been made to improve the process of tracing missing persons, particularly through the adoption of the 2004 Law on Missing Persons and the establishment of an Operational Team for Tracing Missing Persons by the Republika Srpska Government.

6.3 The State party further submits that a lot of success has been achieved in the quest to determine the whereabouts or fate of missing persons. During the war, nearly 30,000 people went missing, of which more than 20,000 have been exhumed and more than 18,000 identified. Since its creation, the Missing Persons Institute has taken measures for a faster and more efficient process of searching, including through the creation of regional offices and organizational units. At the time of the present submission, more than 769 exhumations had been carried out, and others were still pending, while 800 persons were still missing in the municipality of Prijedor, including Mensud Rizvanović.

6.4 The State party considers that, in order to avoid additional trauma, family members are not usually informed of exhumations and DNA testing. However, the State party submits that on 16 September 2010, they informed Fatima Rizvanović that exhumations

were pending in the area of Prijedor Municipality, and that they would notify her if a preliminary identification of her son was to be carried through DNA analysis.

Further comments from the authors

7.1 On 15 September 2011, the authors sent their additional comments, in which they considered that the State party's reply did not provide any new information with regard to the enforced disappearance of Mensud Rizvanović, and that it failed to address a number of the issues that they had raised. The authors therefore reiterate their previous submissions.

7.2 The authors further inform the Committee that on 1 April 2011, the Ministry of Justice of Republika Srpska issued a decision rejecting the appeal presented by Fatima Rizvanović against the decision of the Republika Srpska Attorney General's Office regarding her claim for non-pecuniary damage and inviting her to turn to ordinary courts. The authors argue that since Mensud Rizvanović was a civilian, the existing legal framework does not allow his relatives to obtain compensation for non-pecuniary damages in the same way as the relatives of a veteran could do. Furthermore, they consider that it is the practice of regular courts to reject claims for non-pecuniary damage for harm suffered during the war, as they apply a statute of limitations of a subjective three years and an objective five years. The authors therefore argue that they do not dispose of an effective remedy.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement and that the authors have exhausted all available domestic remedies.

8.3 The Committee notes that the State party has not challenged the admissibility of the communication and that the authors' allegations have been sufficiently substantiated for the purposes of admissibility. All admissibility criteria having been met, the Committee declares the communication admissible and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The authors claim that Mensud Rizvanović is a victim of enforced disappearance at the hands of the VRS since his illegal arrest on 20 July 1992, and that despite their numerous efforts, no prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify his fate and whereabouts and to bring the perpetrators to justice. In that respect, the Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which failure by a State party to investigate allegations of violations and to bring to justice perpetrators of certain violations (notably torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances) could in and of itself give rise to a separate breach of the Covenant.

9.3 The authors do not allege that the State party is directly responsible for the enforced disappearance of their relative.

9.4 The Committee notes the State party's information that it has made considerable efforts at the general level in view of the more than 30,000 cases of enforced disappearances that occurred during the conflict. Notably, the Constitutional Court has established that authorities of the State party are responsible for the investigation of the disappearance of the authors' relatives (see para. 2.8 above); domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases (see para. 4.2 above); and DNA samples from a number of unidentified bodies have been compared with the DNA samples of Fatima and Mensud Rizvanović's children.

9.5 The Committee recalls its jurisprudence, according to which the obligation to investigate allegations of enforced disappearances and to bring the perpetrators to justice is not an obligation of result, but of means, and that it must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities of the State party.[29] However, the Committee notes that, according to the information provided by the authors and the State party, no specific measures have been undertaken to investigate the arbitrary deprivation of liberty, ill-treatment and enforced disappearance of Mensud Rizvanović and to bring those responsible to justice. The Committee further notes, inter alia, that the authors have never been consulted by the Constitutional Court on whether the decision of 16 July 2007 had been enforced; that they were not informed of the adoption of the Constitutional Court decision of 27 March 2009 stating that the decision was enforced; no information has been provided as to the fate and whereabouts of Mensud Rizvanović; and the Fund for Support to the Families of Missing Persons has still not been established. Finally, the Committee notes that the limited information that the family managed to obtain throughout the proceedings was only provided to them at their own request, or after very long delays, a fact that has not been refuted by the State party. The Committee considers that information on the investigation of enforced disappearances must be made promptly accessible to the families.[30] Accordingly, the Committee concludes that, in the circumstances, the facts before it reveal a violation of article 2, paragraph 3, of the Covenant, read in conjunction with articles 6, 7, and 9, with regard to the authors and their disappeared relative.

9.6 The Committee further notes that the social allowance provided to the authors depended upon their acceptance to recognize their missing relative as dead, while there is no certainty as to his fate and whereabouts. The Committee considers that to oblige families of disappeared persons to have the person declared dead in order to be eligible for compensation while an investigation is ongoing, makes the availability of compensation dependent on a harmful process, and constitutes an inhumane and degrading treatment in violation of article 7, read alone and in conjunction with article 2, paragraph 3, of the Covenant with respect to the authors..[31]

9.7 In the light of the above findings, the Committee will not examine separately the author's allegations under article 2, paragraph 3, read in conjunction with articles 10 and 16 of the Covenant.

9.8 As regards the alleged violation of articles 2, paragraph 1, and 26 of the Covenant, the Committee notes the argument of the authors that the Law on Compensation for Pecuniary and non-Pecuniary Damages, caused by the War Activities in the Period from 20

[29] See communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, *Prutina and others* v. *Bosnia and Herzegovina*, Views adopted on 28 March 2013, para. 9.5.

[30] Ibid., para. 9.6.

[31] Ibid.

May 1992 to 19 June 1996 and its subsequent amendments do not exclude civilians from the right to receive compensation, and that the exclusion referred to results from the interpretation of the law by the Attorney General's Office and is discriminatory. The Committee further notes that, according to the State party, the non-applicability of the said legislation to civilians and their families arises from article 8, paragraph 2, of the said law which specifies that the law only applies to damages caused "in the military line of duty and duties to defend the country". The Committee further notes the argument of the State party that other procedures exist for the authors to exercise their right to compensation, and that the authors therefore do not sufficiently substantiate their claim as to the discriminatory character of the law and its interpretation. In the absence of any further information before it, the Committee considers that the available information does not enable it to find a violation of the authors' rights under articles 26 and 2, paragraph 1, of the Covenant.

9.9 The Committee further acknowledges that, according to the most recent information provided by Ruvejda Rizvanović, Fatima Rizvanović passed away on 19 May 2013, without having fulfilled her right to the truth, to justice and to reparation for the enforced disappearance of her son.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the authors' rights under article 2, paragraph 3, of the Covenant in connection with articles 6, 7 and 9 of the Covenant with regard to the authors and their disappeared relative; and article 7, read alone with regard to the authors.

11. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide Ruvejda Rizvanović and her family with an effective remedy, including: (a) continuing its efforts to establish the fate or whereabouts of Mensud Rizvanović, as required by the Law on Missing Persons of 2004; (b) continuing its efforts to bring those responsible for his disappearance to justice and to do so by the end of 2015, as required by the National War Crimes Strategy; and (c) ensuring adequate compensation. The State party is also under an obligation to prevent similar violations in the future and must ensure, in particular, that investigations into allegations of enforced disappearances are accessible to the missing persons' families, and that the current legal framework is amended so that providing social benefits and measures of reparations to relatives of victims of enforced disappearance is not subjected to the obligation to obtain a municipal court's decision certifying the death of the victim.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in all three official languages of the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion of Committee member Gerald L. Neuman, joined by Committee member Anja Seibert-Fohr (concurring)

I write separately to address two issues that the majority has defensibly chosen not to reach. The authors asked the Committee also to find that the State party had violated the obligation to provide an effective remedy for violations of articles 10 and 16 of the Covenant. I would address those claims, and find that they are not substantiated, for legal reasons that it would be useful to explain.

First, as a general matter:

The Committee has frequently held that enforced disappearances conducted by State authorities result in violations of article 10, which guarantees humane treatment of persons deprived of their liberty. But the State's obligations under article 10 concern the conditions of detention under its own authority, not the forms of lawless deprivations of liberty by others.[a] Article 10 differs in this respect from article 7, which requires States parties "to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power."[b] The fact that an enforced disappearance has occurred does not imply that the State has violated its obligations under article 10, when the disappearance is not attributable to the State.

Similarly, the Committee has concluded that enforced disappearances conducted by State authorities may, in appropriate factual circumstances, violate article 16, which guarantees the right to recognition as a person before the law. It is difficult to see how actors who are not agents of a State, acting without collusion by that State, could themselves negate the recognition by that State of a victim as a person before the law. Thus the fact that an enforced disappearance has occurred in the State's territory does not imply that the State has violated article 16, when the disappearance is not attributable to the State.

Turning to the present case, the authors do not allege that the enforced disappearance of Mensud Rizvanović was attributable to Bosnia and Herzegovina, but rather to armed forces that opposed it. They appear merely to assume that because the atrocity inflicted upon him can be described as an enforced disappearance, articles 10 and 16 must have been implicated, generating additional obligations to provide effective remedies under article 2, paragraph 3 of the Covenant. I would have preferred to explain that this reasoning is erroneous. Without a further basis for connecting the State party to the disappearance, I would hold that the authors have not substantiated their claims that the State party violated article 2, paragraph 3 in conjunction with article 10 or article 16.

[Done in English. Subsequently to be issued also in Arabic, Chinese, French, Russian and Spanish as part of the Committee's annual report to the General Assembly.]

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[a] See Human Rights Committee, general comment No. 21 (1992) on humane treatment of persons deprived of their liberty, para. 2, *Official Records of the General Assembly, Forty-seventh Session, Supplement No. 40* (A/47/40), annex VI, sect. B.

[b] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8, *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40*, vol. I (A/59/40 (Vol. I)), annex III